

I.

INTRODUCTION

In this Fair Labor Standards Act (“FLSA”) action, the Settling Plaintiffs and Tyler jointly request that the Court enter a stipulated order approving the settlement reached between the Parties. The Parties have carefully and exhaustively negotiated a partial, no fault settlement in this action. They have agreed to resolve the disputed factual and legal issues on terms set forth in a settlement agreement, which generally is described below (the “Agreement”). Because the Parties have agreed to maintain the confidentiality of the specific terms of the Agreement, the Parties jointly request to present the Agreement to the Court in camera for review, if necessary, in connection with approval of the settlement.

Pursuant to the Agreement, the Parties seek approval of the settlement. The Parties stipulate to the following: that the settlement agreement reflects a reasonable compromise of issues actually in dispute, the settlement was reached in an adversarial context in which the Plaintiffs were represented by competent and experienced counsel, and the totality of the proposed settlement is fair and reasonable.

II.

PROCEDURAL HISTORY

On October 28, 2008, seven (7) Plaintiffs who formerly worked at Tyler and/or Defendant EDP Enterprises, Inc. filed this lawsuit in the United States District Court for the Eastern District of Texas, Marshall Division, alleging overtime violations under the Fair Labor Standards Act (“FLSA”). Thereafter, on May 9, 2009, Plaintiffs filed an Amended Complaint adding additional named plaintiffs who asserted the same overtime claims under the FLSA. By order of June 23, 2006, the Court granted Plaintiffs’ Motion for Conditional Certification.

There initially were four (4) different categories of employees in the lawsuit.¹ In May of 2010, the Parties engaged in a mediation as to three (3) of the four (4) groups of employees in the lawsuit and were able to reach a settlement of those groups' claims which ultimately was approved by this Court by order of December 28, 2010. Thereafter, the Parties commenced discovery as to the remaining category of Plaintiffs who performed software implementation functions.

Near the close of discovery, and pursuant to the Court's scheduling order, the Parties again participated in mediation before mediator William D. Hartsfield, who had presided over the first mediation and who has extensive experience mediating FLSA collective actions. After a full day of mediation on January 10, 2011, and further deliberations over the next two days, counsel for the Parties agreed to a final resolution of the claims of the remaining Plaintiffs in the case.

The Plaintiffs and opt-in Plaintiffs subject to this settlement are: Melanie Baird, Joy Bibles, Titus Britt, Jill Brown, Linda Carrington, Larry Churnovic, Edward David, Tony Dodd, Gayla Duke, Amy Dunn, Sandra Dunning, Betty Dupree, Eric Emde, Joy Flynn, Kimberly Gennette, Ronald Grimwood, Kelly Hampton, David Hayner, Kim Huynh, Geraldine Ingram, Bethany Maynard, Tulina McElhaney, Ilene Meyers, Laura Milburn, Kevin Mosenthin, Lorraine Mutch, Thomas O'Haver, Travis Void, Lisa White, and Eyvonne Wilton. The Parties, pursuant to the requirements of the FLSA, now request the Court to approve the resolution of the claims of the plaintiffs and opt-in plaintiffs identified above.

¹ Tyler does not intend to waive, through this Joint Motion or otherwise, its contention that the lawsuit is not appropriate for collective action under the FLSA due to divergent job responsibilities and duties of the plaintiffs and opt-in plaintiffs. As explained more fully herein, Tyler is agreeing to resolve part of this case only to avoid the fees and costs associated with continued litigation and reserves its right to contest certification should the Court not approve the Parties' settlement.

III.

THE COURT SHOULD APPROVE THE SETTLEMENT AGREEMENT

This Court should approve the settlement agreement because the settlement was achieved in an adversarial context, the Settling Plaintiffs are represented by competent and experienced counsel. Moreover, the Parties stipulate that the settlement provisions are fair and reasonable.

An FLSA claim, except in two circumstances, cannot be waived or settled. *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697, 706 (1945). The exceptions are, 1) that the Secretary of Labor can supervise the payment of back wages, or, 2) that the employer and employee present the proposed settlement to the district court for approval. 29 U.S.C. § 215(b). Both the Settling Plaintiffs and Defendants request this Court to approve the Parties' settlement agreement.

The settlement was negotiated at arm's length by experienced counsel who protected the rights of the Parties. Accordingly, the settlement reflects a reasonable compromise regarding bona fide disputes between the Parties with respect to liability and the amount of same under the FLSA. The Parties have agreed to a proposed settlement in order to avoid the necessity, expense, inconvenience and uncertainty of litigation. Both Parties are represented by counsel experienced in FLSA cases, and counsel for the Parties believe that settlement is in the best interests of their respective clients. For these reasons, the Parties respectfully request the Court approve their settlement as to the plaintiffs and opt-in plaintiffs identified herein.

IV.

**THE PARTIES REQUEST THAT THE COURT REVIEW THE SETTLEMENT
AGREEMENT IN CAMERA**

While the terms of the Settlement Agreement are summarized herein, the Parties have agreed to maintain the terms of the Agreement as confidential. As such, it is not filed as an exhibit to this motion. Rather, the Parties have agreed to present the actual Settlement Agreement documents, including, if necessary, affidavits by the Settling Plaintiffs' counsel discussing the Lodestar factors and other issues pertaining to reasonable attorneys for the settlement, in a form agreed to by the Parties, to the Court in camera, should the Court require. Such in camera review will allow the Parties to protect the confidentiality of the specific terms of the Settlement Agreement by avoiding any requirement that the document itself be made a matter of public record. The Parties would note that the form of the settlement agreement is identical to the one originally submitted to the Court in connection with the previous partial settlement reached by the Parties.

V.

CONCLUSION

The Parties believe that the settlement reached was a fair and reasonable compromise of the respective positions of both sides. The Parties therefore respectfully request the Court approve the settlement and enter an order dismissing the claims of the following settling Plaintiffs: Melanie Baird, Joy Bibles, Titus Britt, Jill Brown, Linda Carrington, Larry Churnovic, Edward David, Tony Dodd, Gayla Duke, Amy Dunn, Sandra Dunning, Betty Dupree, Eric Emde, Joy Flynn, Kimberly Gennette, Ronald Grimwood, Kelly Hampton, David Hayner, Kim Huynh, Geraldine Ingram, Bethany Maynard, Tulina McElhaney, Ilene Meyers, Laura Milburn, Kevin Mosenthin, Lorraine Mutch, Thomas O'Haver, Travis Void, Lisa White,

and Eyvonne Wilton. Entry of such an order will “secure the just, speedy, and inexpensive determination” of this action in accordance with Federal Rule of Civil Procedure 1.

Respectfully submitted:

/s/ Laureen F. Bagley

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